

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5293 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMSWAROOP PURANDAS MODI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
Mr.S.J.Dave, A.G.P. for Respondents No. 1, 2 & 3
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 05/09/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 12.6.1997 passed by the respondent No.2 being the District Magistrate, u/s. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 (for short 'PBM Act').

2. The grounds of detention appearing at Annexure :
B inter-alia contain the allegations with regard to how the petitioner has been committing breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (for short 'the Order'). Blue Kerosene has been one of the essential commodities in respect of which the aforesaid order of 1981 has been passed and has been in operation. On or around 28.5.1997 a raid was carried out on the basis of a complaint received by the Food and Civil Supplies Department, Ahmedabad City to the effect that in the open place behind the godown of Vijay Transport Company, Shiv Shakti Estate one person, viz. Mr. Ramswaroop was doing unauthorised business of kerosene and it was found some loaded and unloaded barrels were kept adjoining to well and one loading Rickshaw bearing No.GJ-2T-7817 and one Tata Tempo bearing No.GJ-1-U-7282 were parked and both were found empty. At the time of inspection one Shri Sunilbhai Shankarlal Shahu was present and in his presence 5 barrels loaded with kerosene were found. Upon verification 200 ltrs. of blue kerosene in one barrel was noticed. In other 4 barrels, three barrels contained 200 ltrs. of kerosene and one barrel contained 100 ltrs. of kerosene. Thus in all 700 ltrs. of kerosene was converted from blue to white kerosene. From the place of inspection other articles were also found. Shri Sunilbhai S. Shahu has stated in his statement dated 28.5.1997 that those articles were belonging to the petitioner, who confessed that he was doing the business of converting blue coloured kerosene into white kerosene and transporting the same under the instructions of the petitioner. The loading rickshaw bearing No.GJ-2T-7817 was taken into custody from the possession of Shri Sunilbhai S. Shahu and the seizure order was served to him. He has falsely disclosed that the said loading rickshaw was belonging to the petitioner and the same was used for unauthorised transportation. The said loading rickshaw was found of the ownership of one Zakir Hussain Shaikh. Shri Sunilbhai S. Shahu has not produced any record with respect to the stock of kerosene found out at the time of inspection.

It was found that Mr. Mustak Hussain Nathubhai Waris was owner of Waris Transport, whose Tata Truck bearing No.GJ-1U-7282 was found parked at the place of inspection and he has stated in his statement that he was not concerned with the stock of kerosene seized at the time of inspection.

Mr.Ladubhai Bhanvarlal Marwadi, owner of Tea shop, running his tea shop near the inspection place has stated in his statement dated 2.6.1997 that the petitioner was doing business of kerosene and Shri Sunilbhai Shahu was abetting him in the unauthorised business. He has further disclosed that he knows the petitioner and Sunilbhai and they were keeping empty and loaded barrels on the said place and they were transporting the stock of kerosene through the loading rickshaw which was seized from the place of inspection and also disclosed that said Zakir Hussain Shaikh was doing the business of kerosene along with the petitioner.

The members of Shiv Shakti Estate Development Association (proposed) Mr.Jaiprakash Desai and Mr.Rameshkumar N. Agrawal in their joint statement date 5.6.1997 have stated that the association has not given permission to the petitioner, Zakirhussain Shaikh and Sunilbhai for doing the business of kerosene at the place of inspection.

On 6.6.1997 Zakirhussain Pirbax Shaikh has disclosed that he was transporting the stock of kerosene loaded in barrels to the places directed by the petitioner and the rent fixed for the same was given to him. It has been further stated that Zakirhussain Shaikh knows the petitioner and Sunilbhai and it was found that since last one month Sunilbhai was doing unauthorised business of kerosene. The said Zakirhussain Shaikh has accepted the seizure order, seizing 200 ltrs. blue coloured kerosene, 700 ltrs. white kerosene converted from blue kerosene and loading rickshaw bearing No.GJ-2T-7817. The laboratory report dated 6.6.1997 of the sample taken in the presence of Sunilbhai proved that the kerosene seized from the place of inspection was blue coloured which was meant for public distribution system. Shri Sunilbhai has not disclosed as to how many times the stock of kerosene was transferred and from which place blue coloured kerosene was brought and at which place the stock of kerosene was delivered and thus false statement had been given by saying that the petitioner was coming with Shri Sunilbhai and Sunilbhai did not know about those places where barrels were unloaded. Thus, it was found that Sunilbhai Shahu abetted the petitioner and Zakirhussain Shaikh in authorised transportation of kerosene and thereby engaged in unauthorised activity of disposing of the stock of blue coloured kerosene meant for public distribution.

3. The impugned order of detention and continued detention of the petitioner thereunder has inter-alia

been challenged on the ground that the representation dated 14.7.1997 appearing at Annexure : C was sent by Speed Post and the reply rejecting the said representation was received by the petitioner on 11.8.1997. Hence, delay in considering the representation has adversely affected the petitioner's right under Article 22(5) of the Constitution of India. Mr.S.J.Dave, learned A.G.P. for respondents No.1,2 & 3 has submitted from the relevant files that the representation was received in the office of the concerned Minister on 15.7.1997 and the concerned Minister signed the note on 16.7.1997. However, the representation was forwarded through the concerned Minister's office to the concerned Department on 25.7.1997 and the delay in forwarding such representation/file from the Minister's office to the concerned Department has remained unexplained. The concerned department received the representation on 29.7.1997 and here also the delay of 4 days has remained unexplained. Thereafter the concerned department forwarded the file to the concerned Branch on 30.7.1997 and the same was put up to the Under Secretary on 31.7.1997. It was cleared on 1.8.1997 and forwarded to the Deputy Secretary. Again as the concerned Minister of the State was not available it was sent to the Minister of Civil Supplies who received the same on 5.8.1997. It is accordingly submitted by Mr.Dave, learned A.G.P. that the decision was communicated to the detenu on 6.8.1997. However, it is the case of the detenu that he received it on 11.8.1997. From the details made available by Mr.Dave from the relevant files it clearly appears that there is gross delay in transmitting the representation/file from one place to another place and that has resulted in the receipt of the decision by the detenu at a very belated point of time. This delay has obviously affected the petitioner's constitutional right as guaranteed under Article 22(5) of the Constitution of India and there is clear violation of the said provision. In that view of the matter the continued detention of the petitioner has obviously been rendered illegal.

4. Following order is, therefore, passed :

In view of what is stated above, continued detention of the petitioner under the impugned norder of detention is held illegal and the same is put to end. It is directed that the petitioner - detenu Ramswaroop Purandas Modi shall be set at liberty forthwith, if he is not required to be detained in any other case. Rule made absolute accordingly.

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